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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CHARLES WRIGHT, JR. and ANGELA WRIGHT, a married couple; and ZIA, LLC, a New Mexico limited liability company, Plaintiffs/Counterdefendants/ Appellees, v. LARRY LARGE and CHRISTINA LARGE, a married couple, Defendants/Counterclaimants/ Appellants.	2 CA-CV 2012-0039 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20090410

Honorable Kenneth Lee, Judge

AFFIRMED

Good Law, P.C.
By Gregory E. Good
Tucson
Attorney for Plaintiffs/
Counterdefendants/Appellees

Law Office of Dan W. Montgomery
By Dan W. Montgomery
Tucson
Attorney for Defendants/
Counterclaimants/Appellants

E S P I N O S A, Judge.

¶1 In this action for breach of contract, consumer fraud, fraud, conversion, unjust enrichment, and defamation, defendants/counterclaimants/appellants Larry and Christina Large (collectively "Large") appeal from the trial court's confirmation of an arbitration award in favor of plaintiffs/counterdefendants/appellees Charles and Angela Wright and Zia, LLC (collectively "Wright"). We affirm.

Background

¶2 We view the facts in the light most favorable to upholding the trial court's confirmation of the arbitration award. *Park Imperial, Inc. v. E.L. Farmer Constr. Co.*, 9 Ariz. App. 511, 513-14, 454 P.2d 181, 183-84 (1969). Large's statement of facts cites exclusively to the transcript of the trial de novo held in the superior court, yet he failed to include the transcript in the record on appeal as required by Rule 11(b)(1), Ariz. R. Civ. App. P. *See also* § 12-2101.01(B) (arbitration appeals taken in same manner as from judgments in civil actions). We accordingly disregard that portion of his brief and rely instead on Wright's statement of facts to the extent it is supported by the limited record before us, including the trial exhibits and the depositions of Large and Carlos Cuadros, which were considered by the superior court. *See Sholes v. Fernando*, 228 Ariz. 455, n.2, 268 P.3d 1112, 1114 n.2 (App. 2011). When documents necessary to the resolution of the case are absent from the record, "we presume that the record before the trial court supported its decision." *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996).

¶3 In 2004, Wright and Cuadros, long-time friends, entered into an agreement in which Cuadros would purchase property near Puerto Peñasco, Sonora, Mexico from Large, Cuadros's then-employer and housemate, on behalf of Wright, who would provide the money for the purchase. In June 2004, Wright wired Large $17,000 for the property. Large, who claimed in his deposition he had been unaware that Wright was the true purchaser of the property, never conveyed the lot to Wright.[1] Large kept the $17,000, however,[2] and Cuadros eventually declared bankruptcy.

¶4 Wright sued Large, Cuadros, and various related parties and entities, alleging breach of contract, consumer fraud, fraud, conversion, and unjust enrichment. The case was assigned to an arbitrator for court-ordered mandatory arbitration pursuant to Rules 72 through 77, Ariz. R. Civ. P., and Rule 4.2, Pima Cnty. Super. Ct. Loc. R. P. The arbitrator found in favor of Wright and awarded $17,000 plus attorney fees and costs against Large. No award was entered against Cuadros. Large appealed to the superior court, which held a trial de novo, confirmed the arbitration award, and awarded additional attorney fees and costs in a final judgment totaling $39,315. Large appealed the superior

[1]Large instead claimed to have conveyed the property to Cuadros, who allegedly later reconveyed it to Large as part of a settlement in an unrelated employment dispute between the two. But this claim was contradicted by Cuadros, who testified that the lot never had been conveyed to him. Moreover, the written settlement agreement between Large and Cuadros, which states that it constitutes the fully integrated agreement, contains no mention of any promise to transfer real property.

[2]Apparently for the first time on appeal, Large disputes that he kept the money, asserting instead that he transferred it to Cuadros at some point. This assertion finds no support in the record, however, and we therefore disregard it. *See Ashton-Blair*, 187 Ariz. at 317, 928 P.2d at 1246.

court's decision, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101.01(A)(6), (B).

Discussion

¶5 Large concedes that Wright is entitled to $17,000, but contends that Cuadros owes the money and that the superior court erred in confirming the award against Large. We review the superior court's decision to confirm an arbitration award for an abuse of discretion. *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 180 Ariz. 148, 150, 882 P.2d 1274, 1276 (1994). The sole Arizona authority Large cites in support of his argument is *K-Line Builders, Inc. v. First Federal Savings & Loan Ass'n*, on which he relies for the proposition that an enforceable contract requires offer, acceptance, consideration, and specificity of terms. 139 Ariz. 209, 212, 677 P.2d 1317, 1320 (App. 1983). Large denies the existence of a contract between himself and Wright, maintaining that he "and Mr. Wright never even discussed a sale of a lot with each other, so none of the requirements of a valid contract are present."

¶6 In confirming the arbitrator's award, the superior court did not make written findings of fact or conclusions of law. "'No findings of fact having been requested or made, we must presume the trial court found every controverted issue of fact necessary to sustain the judgment, providing there was evidence in the record to support the same.'" *Hitching Post Lodge, Inc. v. Kerwin*, 101 Ariz. 402, 405, 420 P.2d 273, 276 (1966), *quoting Kellogg v. Bowen*, 85 Ariz. 304, 309, 337 P.2d 628, 631 (1959). But, because Large failed to provide us with the transcript of the superior court proceedings,

we have no way of determining whether the court's decision was supported by the testimony elicited at trial; we therefore must presume the missing evidence supported the court's conclusion. *See Ashton-Blair*, 187 Ariz. at 317, 928 P.2d at 1246. And to the extent there was conflicting testimony, weighing the evidence and determining the credibility of witnesses are the prerogative of the trial court. *Premier Fin. Servs. v. Citibank (Ariz.)*, 185 Ariz. 80, 85, 912 P.2d 1309, 1314 (App. 1995).

¶7 In Cuadros's deposition, he indicated that Wright and Large were the actual parties to the transaction and that at one point, after the money had been deposited in Large's account but before title to the property was transferred, Wright came to Mexico to meet Large because it was "better . . . to put them together and have them . . . do their dealings." Although Large denied ever having met Wright, the superior court could have discredited his testimony. Furthermore, Wright testified in the trial de novo and, although his testimony is not before us, the trial court's ruling is consistent with Wright having established that the elements of a contract between the two were present. *See Ashton-Blair*, 187 Ariz. at 317, 928 P.2d at 1246 (items missing from record presumed to support trial court's decision); *see also Hitching Post Lodge, Inc.*, 101 Ariz. at 405, 420 P.2d at 276 ("'[T]his court will sustain a judgment on appeal if it can be sustained upon any theory which is within the issues and supported by the evidence.'"), *quoting In re Estate of Milliman*, 101 Ariz. 54, 59, 415 P.2d 877, 882 (1966).

¶8 Alternatively, the record could also support a determination by the trial court that Cuadros entered the agreement on Wright's behalf with Jesus Valenzuela,

whom Cuadros characterized as "[o]ne of the agents of Large"; that Valenzuela was authorized or appeared to be authorized to act on Large's behalf; and that Large therefore was liable on the contract whether or not he personally entered an agreement with Wright. Large testified in his deposition that during the relevant timeframe, he had been involved in "hundreds [or] thousands of different . . . property deals" and that he did not participate in the "detail work" of the "[d]ay-to-day transactions." He also said he "pa[id] a lot of lawyers and a lot of accountants to keep things straight" and acknowledged that he and Valenzuela were co-developers of a different subdivision and Valenzuela was a managing partner, able to transact business with respect to that subdivision. Thus, at least some of Large's business was conducted through agents. *See O.S. Stapley Co. v. Logan*, 6 Ariz. App. 269, 272, 431 P.2d 910, 913 (1967) ("[A] principal cannot escape liability by leaving his business in the hands of agents, then denying their authority to act for him."). Since "'[t]he relation of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case," the superior court could have found Large bound by the contract under an agency theory, despite his denial of the existence of agency. *Id.*, *quoting* 2 C.J.S. *Agency* § 23 (1967).

¶9 Under any theory, there is evidence of a wire transfer from Wright to Large in the amount of $17,000, but no evidence that Large returned the money to Wright or

conveyed any property to him or anyone else in exchange for this money.[3] On this record we find no abuse of the trial court's discretion.

Disposition

¶10 For the foregoing reasons, the judgment of the superior court confirming the arbitration award is affirmed. Wright, as the prevailing party in a matter arising out of contract, is entitled to his costs and reasonable attorney fees on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. §§ 12-341, 12-341.01(A).

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

[3]When asked at his deposition whether he "would . . . be willing to return the $17,000," Large responded that he would not do so. And when Cuadros was asked what Wright had obtained in exchange for the $17,000 he paid Large, Cuadros replied, "Zero."